

## Supporting the Unrepresented: Providing Trial Information to Self-Represented Litigants

By: Alena Storton

Case Commented On: *R v Hamiane*, [2016 ABQB 409 \(CanLII\)](#)

Recent appeals by self-represented litigants (SRL) often focus on the extent of a trial judge's duty to assist the self-represented litigant. Trial judges are expected to assist SRLs throughout a trial, but the scope of assistance is left to their discretion (*R v Hamiane*, [2016 ABQB 409 \(CanLII\)](#); *Cold Lake First Nations v Alberta (Minister of Tourism, Parks & Recreation)*, [2012 ABCA 36 \(CanLII\)](#); *Malton v Attia*, [2016 ABCA 130 \(CanLII\)](#); for earlier posts discussing *Malton v Attia* see [here](#) and [here](#)). From the appeals, however, it is clear that SRLs do not feel sufficiently supported or informed to meaningfully participate in a trial. To remedy this issue, trial judges should consider altering the way in which they approach assisting SRLs in the trial process. Judges already explain procedural steps during a trial, as seen in *Hamiane*. By providing that same assistance at the outset of a trial in accordance with an established set of guidelines, however, trial judges could streamline the process and ensure that all SRLs receive consistent information sufficient to allow them to meaningfully and fully participate in a trial.

This method of assisting SRLs was discussed in *Hamiane*, an Alberta Court of Queen's Bench decision. In this case, Mr. Justice Graesser heard an appeal of a summary conviction for dangerous driving. Mr. Hamiane represented himself with the help of a French translator at trial. On appeal, Mr. Hamiane asked for a new trial because he said that the trial judge did not adequately inquire as to whether he wished to retain a lawyer, explain the trial process, instruct him on the applicable law or the permissible nature and extent of cross-examination, or satisfy herself that Mr. Hamiane had the necessary linguistic abilities to understand the proceedings (at para 3).

Justice Graesser determined that the extent to which a trial judge must inquire whether a SRL wishes to retain counsel, or explain the trial process, are matters for the judge's discretion. That discretionary decision should be based on the circumstances, including the seriousness of the charge (at para 78). In this case, Justice Graesser focused quite extensively on the seriousness of the charge and the potential consequences for the accused. He concluded, "These were not 'serious' charges" (at para 55) and the potential consequences for Mr. Hamiane were minimal. Specifically, Mr. Hamiane was not at risk of being sent to jail and "there was no indication at the trial that a criminal record would affect Mr. Hamiane differently than other people convicted of such [driving] offences" (at paras 51-52). In addition, Justice Graesser noted that the case was not complex and did not give rise to any difficult legal issues or obvious *Charter* arguments (at para 53). Overall, Justice Graesser found that the trial judge exercised her discretion properly and adequately assisted Mr. Hamiane (at paras 60 & 94).

In reaching this decision, Justice Graesser also rejected Mr. Hamiane’s argument that, at the outset of a SRL’s trial, the judge should describe the trial process, the presumption of innocence, the burden of proof, the specific elements of a charge that the Crown must prove, possible defences, the purpose and technique of cross-examination, and various aspects of calling a defence (at para 79). In Justice Graesser’s view, these explanations may be necessary to ensure a fair trial in cases that include a serious charge and potentially serious consequences (at para 80). In less serious cases, however, Justice Graesser held that a trial judge could choose to give only some of this information. He also went on to say, “But in less serious cases, such as this one, a reviewing Court should be slow to fetter the discretion given to trial judges to assess the situations unfolding before them and to determine the best course of action” (at para 80).

It seems unreasonable, however, to base the amount of assistance to be provided to a SRL primarily on the particular charge or other circumstances of a case, as SRLs generally face the same challenges when navigating the Canadian legal system no matter how serious or seemingly inconsequential the charge or claim. The National Self-Represented Litigants Project: Identifying and Meeting the Needs of Self-Represented Litigants interviewed SRLs from a range of legal areas and found that SRLs consistently felt overwhelmed and identified a need for orientation and education, as well as one-on-one assistance to help with their case and understand what is involved in representing themselves (“[Final Report](#)” at p 11). The study also indicated that the information that SRLs were able to access before the trial varied and was inconsistent. SRLs’ primary source of information was court staff, but some of the respondents could not find information on these resources online or in the courthouses and, as a result, missed out on this important source of information (at p 10). Information sheets created by the courts also may not help some self-represented litigants because, as Justice Graesser pointed out, these documents are only available in English (*Hamiane* at para 82). In addition, guidance on procedural matters, a critical topic for participating in a trial, was generally missing from informational sources for SRLs (at p 67).

In light of these common challenges, providing information on the trial process and its requirements at the outset of a trial may be an effective method of fulfilling a judge’s duty to assist SRLs to ensure that all SRLs have access to a basic level of information necessary to participate in a trial, regardless of the seriousness of the charge or any language or knowledge constraints. In addition, creating guidelines for this assistance would provide judges with a useful framework for the type and scope of information to be discussed at the beginning of a trial. An explanation given at the beginning of trial would also help to make trials more efficient because judges would not need to stop at each new step to explain what is required, as in Mr. Hamiane’s trial. Overall, giving SRLs an explanation of trial process and requirements at the outset of trials in accordance with established guidelines would likely improve SRLs’ participation in trials by ensuring that all SRLs have consistent access to sufficient information.

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